

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDGAR GARCIA,

Plaintiff,

-against-

CYNTHIA BRANN, NYC Dept. of Corr.
Commissioner; PATSY YANG, Health Dir.
Comm.; MARGARET EGAN, Board of Corr.
Exec. Dir.,

Defendants.

21-CV-1234 (ER)

ORDER OF SERVICE

EDGARDO RAMOS, United States District Judge:

Plaintiff, currently detained in the Vernon C. Bain Center, brings this *pro se* action under 42 U.S.C. § 1983, alleging that jail officials are failing to protect him from contracting COVID-19.¹ By order dated March 9, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).²

DISCUSSION

A. Defendant Brann

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Commissioner Cynthia Brann waive service of summons.

¹ This action is similar to an action filed by 50 VCBC detainees that was assigned to Judge Daniels and referred to Magistrate Judge Aaron. *See Lee v. Brann*, ECF 1:20-CV-8407, 7 (GBD) (SDA) (S.D.N.Y.).

² Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

B. Defendants Yang and Egan

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date the summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants Yang and Egan through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these Defendants. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these Defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is respectfully directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is respectfully directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendant Brann waive service of summons.

The Clerk of Court is further instructed to complete the USM-285 forms with the addresses for Yang and Egan and deliver all documents necessary to effect service to the U.S. Marshals Service.

SO ORDERED.

Dated: March 18, 2021
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is positioned above a horizontal line.

EDGARDO RAMOS
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Patricia Yang
Senior Vice President for Correctional Health Services
for NYC Health + Hospitals
55 Water Street
18th Floor
New York, New York 10041
2. Margaret Egan
Executive Director of the Board of Correction
1 Centre Street
Room 2213
New York, New York 10007